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Natural Rights. By DAVID G. RITCHIE. London: Swan, Sonnenschein & Co.; New York: Macmillan & Co., 1895. 8vo. pp. xvi + 304.

NATURAL RIGHTS is one of the third series of the Library of Philosophy now in course of publication in England under the editorship of Mr. J. H. Muirhead. Professor Ritchie's attitude toward the doctrine which he discusses could of course not be otherwise than hostile, but his hostility is tempered throughout by a desire to do it full justice. His aim is to treat the doctrine as an historical fact of such great importance should be treated; to point out not alone its lack of philosophic and historical foundation but also how it came ever to be so widely held. It has survived the criticisms of both Burke and Bentham. It has considerable strength in England today among such dissimilar persons as the conservatives and the anarchists, and in the United States forms a fundamental article in the popular national creed. But like other doctrines which have been outgrown this one is now effective only as an impediment in the way of further progress. It has served its purpose in history and should now undergo such revision as will deprive it of its distinctive characteristics of rigidity and individualism, but to this end the author believes that criticism of it should be sympathetic as well as unsparing. Professor Ritchie's attitude towards natural rights is evidently a corollary of his position upon certain more fundamental metaphysical questions, but in this book the metaphysics must be read, if at all, between the lines. The discussion is held closely to the immediate matter in hand and is accompanied with a wealth of concrete illustration which lends force to the argument and makes it very pleasant reading. The style, in general, as is always true of the author, is easy, accurate and direct, and lighted up by a constant play of humor.

The two parts into which the book is divided treat respectively of the "Theory of Natural Rights" and of "Particular Natural Rights." The first part undertakes to review the history of the idea of Nature in law and politics, to describe the present development of Rousseauism, and then to reconstruct from the elements of truth in the old doctrine an intelligible conception of rights. The ordinary belief that Rousseau and the French revolutionary leaders were the first to receive the revelation of the gospel of natural rights and the first to proclaim it to the world will not bear the test of examination. As little is it true that the early American declarations owe their inspiration to the

influence of the French. On the contrary Professor Ritchie points out that the doctrine cannot justly be characterized as "French, foolish and frivolous," but that a no less sober person than John Locke is responsible for the theoretical grounds upon which the Americans justified their separation from the mother country. However this may be as a matter of history, the doctrine finds as explicit and abstract statement in the individualism of Locke's treatise as in any French proclamation. But Locke's idea of the law of nature was substantially that of Grotius, and the conception of Grotius was derived by a long line of descent through the Roman jurists, Cicero, the Stoics and the Cynics, from the Sophists of the pre-Socratic age. The truer idea of the "natural" as the "rational," which Locke weaves into his theory at the cost of some consistency, was received through Hooker and Thomas Aquinas from Aristotle, but the cruder conception is the predominating one and was handed on by Locke to Rousseau and the writers who have followed him. Now the conception of nature, from the times of the Sophists down to Locke, Rousseau and the philosophic anarchists of today, has always been to a greater or less extent the mere negation of the existing order of society, and natural rights have always been interposed by way of objection to tyranny and oppressive legislation. Men have an almost irresistible tendency to state their practical problems by means of antitheses, and the whole doctrine of nature and natural rights, Professor Ritchie thinks, is one of the symptoms of this propensity. Men have become dissatisfied at different periods in history with certain features of the existing order, and, instead of characterizing them as conditions from which advance must be made, have chosen to call them violations of an already established natural order and signs of retrogression from a primitive ideal state. Locke therefore regarded the tyranny of the restoration as in direct violation of the rights of British subjects under the law of nature, and Rousseau, more sorely tempted than Locke, believed all of modern civilization to be a terrible mistake. Locke's natural condition of peace is not generically different from Rousseau's state of innocence. In fact "natural" law and "natural" rights have required for their very discovery a condition of things in which they were not respected, and Professor Ritchie of course holds that this strange phenomenon means simply that the term "natural" is a misleading abstract designation which men are apt to apply to what has been found by concrete experience to be rational.

But the question is not merely one of terminology. The "natural" rights are also "individual," and this term is also founded upon an abstraction. Locke's natural rights were the result of invoking the natural law of Grotius in behalf of the individual subjects of an aggressive monarchy which wished to become absolute. The political condition of England in the seventeenth century was most favorable to the growth of a strong individualistic sentiment, and because political thinkers were confused by the noise of conflict, they did not distinguish between the state and society on the one hand, and public officers on the other. This distinction is of course hard to make in England, for historical reasons, but the lack of it is nevertheless one source of error in Locke's system. Seeing, then, that the political individual had been long struggling against the monarchy in defense of his *legal* rights, Hobbes and Locke, though to differing purposes, conceived that society itself is ultimately composed of abstract unrelated individuals, each one of whom is endowed by nature with a full complement of individual "*natural*" rights. Contract was therefore the basis of the state, and, for Locke, the state must respect such of the subject's natural rights as he has not bargained away. Political conditions in France in the next century were sufficiently worse to produce a greatly exaggerated form of the same idea.

The doctrine of natural rights is therefore based on an untenable conception of the nature of society, but so long as rulers need correction it may not result in serious evil to say that they are violating the natural rights of man. In point of fact, however, they are doing merely what ought not to be done. But cases may arise in which necessary legislation may be hindered by an appeal on the part of some interested party to his natural and inalienable rights. He may be making anarchist speeches or employing infants at hard labor. Professor Ritchie's contention is that in such cases the appeal to the natural rights of free speech or free contract is incompetent because there are no such rights. The question of natural rights has nothing to do with such questions as whether free speech and free contract may or may not be good policy in the long run. The final disappearance of the superstition leaves the way clear for the discussion of such questions on their merits. The doctrine originated at a time when it could do little harm, but Professor Ritchie fears that it still possesses considerable vitality and that it is apt to be used by persons who wish their claims to be examined only in a court of "nature" in which they shall

act as judges. Bentham attacked the doctrine with great force, but in his own system he repeated its fundamental error. He did not see that its real defect was its abstract individualism, and in making this the foundation of his own system he virtually perpetuated the old doctrine in a new form. It consequently reappeared more or less distinctly in the opposition of certain early economists to factory legislation. Modern anarchism is founded upon the same metaphysical error.

Such in outline is the main drift of the argument of the first part. In the second, which occupies rather more than one-half of the volume, no less than ten alleged natural rights according to the American and French declarations are subjected to a somewhat severe inspection. Professor Ritchie has evidently bestowed much pains upon this portion of the discussion. Some of the American state constitutions have supplied him with an abundance of illustrative material. The attitude of the American people towards the Mormons is cited as an instance of how much real persecution may be visited upon unpopular practices and beliefs in spite of a widespread theoretical belief in the natural right of all men to freedom from religious persecution. The general purpose of the separate chapters is to show that the recognition of natural rights as "inalienable" or "imprescriptible" is inconsistent with the existence of organized society and that, however solemnly proclaimed, natural rights have in fact never been recognized in practice. It is in these chapters that the author's ready wit, keen sense of humor and skill in casuistry are most marked. It is difficult to criticise a doctrine which many persons regard as self-evidently true and as the source and safeguard of their liberties, without incurring the risk of being misunderstood. It is the only real defect of this excellent book that it does not avoid this risk as carefully as might perhaps have been possible. It is its aim "to expose confusions, to set those people to thinking who can be induced to think." In these particulars it will be largely successful, but it may also be true that the absence of a fuller positive exposition of the theory of rights than is given, may cause the book to appear to some, more exclusively negative in its spirit than it really is.

H. W. S.